

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RICHARD GALE ZLOMKE,

Petitioner,

vs.

ROBERT HOUSTON,

Respondent.

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4:05cv3215

MEMORANDUM AND ORDER

This matter is before the court on filing no. 16, a letter from the petitioner, Richard Gale Zlomke, which has been docketed as a motion to strike the respondent's brief as untimely. The petitioner believes that because the respondent was ordered to file a brief "by" January 10, 2007, the respondent had an obligation to file the brief before that date, e.g., by midnight of January 9, 2007. The petitioner's view is innovative and even sensible, but it is not actually the rule. The rule of court is that the last date of a deadline is included within the deadline, so that an act which must take place by January 10, 2007 is timely if it is accomplished by the close of business **on** January 10, 2007.

Therefore, as the respondent filed his brief on January 10, 2007 (filing no. 14), the brief was not late. Filing no. 16 is denied.

DATED this 16<sup>th</sup> day of May, 2007.

BY THE COURT:

s/ Joseph F. Bataillon  
JOSEPH F. BATAILLON  
Chief District Judge